

## § 385.9

rules, regulations, standards, and orders.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993; 72 FR 36788, July 5, 2007]

### § 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

(b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

[62 FR 60042, Nov. 6, 1997, as amended at 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012]

### § 385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FMCSA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is "satisfactory" or improves a previous "unsatisfactory" safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of "unsatisfactory" is a notice to the motor

## 49 CFR Ch. III (10–1–15 Edition)

carrier that the FMCSA has made a preliminary determination that the motor carrier is "unfit" to continue operating in interstate commerce, and that the prohibitions in § 385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in § 385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in § 385.17.

[65 FR 50934, Aug. 22, 2000, as amended at 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012]

### § 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at <http://www.saferysys.org>, or by telephone at (800) 832-5660.

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 46th day after the date of the FMCSA notice of proposed "unsatisfactory" rating.

(2) All other motor carriers rated as a result of reviews completed on or after November 20, 2000, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 61st day after the date of the FMCSA notice of proposed "unsatisfactory" rating. If FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds an "unsatisfactory" rating to transport passengers in a CMV or to transport hazardous

## Federal Motor Carrier Safety Administration, DOT

## § 385.15

materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an “unsatisfactory” rating which became effective on or after January 22, 2001.

(d) *Penalties.* (1) If a proposed “unsatisfactory” safety rating becomes final, FMCSA will issue an order placing out of service the motor carrier’s operations in commerce. The out-of-service order shall apply both to the motor carrier’s operations in interstate commerce *and to its operations affecting interstate commerce.*

(2) If a motor carrier’s intrastate operations are declared out of service by a State, FMCSA must issue an order placing out of service the carrier’s operations in interstate commerce. The following conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program and uses the FMCSA safety rating methodology provided in this part; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(iii) The order prohibiting the motor carrier from operating a CMV in interstate commerce shall remain in effect until the State determines that the carrier is fit.

(3) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of the FMCSRs.

(e) *Revocation of operating authority.* If a proposed “unsatisfactory” safety rating or a proposed determination of unfitness becomes final, FMCSA will, following notice, issue an order revoking the operating authority of the owner or operator. For purposes of this section, the term “operating authority” means the registration required under 49 U.S.C. 13902 and § 392.9a of this subchapter. Any motor carrier that operates CMVs after revocation of its operating authority will be subject to the

penalty provisions listed in 49 U.S.C. 14901.

[65 FR 50934, Aug. 22, 2000, as amended at 72 FR 36788, July 5, 2007; 72 FR 55700, Oct. 1, 2007; 75 FR 17241, Apr. 5, 2010; 77 FR 28450, 28454, May 14, 2012]

### **§ 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.**

(a) A CMV owner or operator that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

[65 FR 78427, Dec. 15, 2000]

### **§ 385.15 Administrative review.**

(a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed or final safety rating in accordance with § 385.11.

(b) The motor carrier’s request must explain the error it believes the FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(1) If a motor carrier has received a notice of a proposed “unsatisfactory” safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow the FMCSA to issue a written decision before the prohibitions outlined in § 385.13 (a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before such prohibitions take effect.